

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 159 of 1998

in

SPECIAL CIVIL APPLICATION No 8987 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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GOVERNMENT OF GUJARAT

Versus

M M REHAN

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Appearance:

MR DA BAMBHANIA for Appellants  
MR DP VORA for Respondents.

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

Date of decision: 10/02/98

ORAL JUDGEMENT

Admitted. Mr.D.P.Vora appears and waives service of notice of admission on behalf of the respondent

(original petitioner). In the facts and circumstances of the case, the matter is taken up to day for final hearing.

This appeal is filed against an interim order passed by the learned Single Judge on January 28, 1998 in Special Civil Application No.8987 of 1997. It appears that the respondent petitioner filed the above petition which came up before the learned Single Judge for admission on December 12, 1997. Notice was issued and was made returnable on December 18, 1997. Direct service was permitted. Mr. Bambhania, learned Additional Government Pleader stated that respondent no.4 i.e. Assistant Director of Employment, Rajkot was served but appellants nos.1 and 2 were not served. The matter was thereafter adjourned and on January 28, 1998 the impugned order was passed. By the impugned order, the learned Single Judge granted time for filing affidavit-in-reply but a condition was imposed of payment of costs of Rs.1000/- by the Government. The said amount was ordered to be deposited in the account of Advocates' Welfare Fund in the office of Bar Counsel of Gujarat.

Mr. Bambhania stated that though the direct service was permitted, the appellants nos.1 and 2 were not served. The learned Single Judge in these circumstances, ought not to have passed the order of costs. Our attention was invited to two certificates issued by the Department concerned, wherein it was stated that respondents nos.1 and 2 were not served. The said fact is not disputed even by the learned counsel for the petitioner.

In the circumstances mentioned hereinabove, in our opinion, the costs imposed by the learned Single Judge cannot be said to be legal and valid and the order is hereby set aside. Appeal is allowed to the above extent. Since the matter is at interlocutory stage, the learned Single Judge may now decide the same in accordance with law as we express no opinion on merits. The appeal is allowed. The order of the learned Single Judge imposing cost is quashed and set aside. No order as to costs.

Dt. 10.2.1998. (C.K.THAKKER J.)

(A.L.DAVE J.)

GHB/OK/T